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Recommended Citation

Reply Brief, *Wilson v. Wilson*, No. 15277 (Utah Supreme Court, 1978).

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROCHELLE RITCHIE WILSON,

Plaintiff-Respondent,

-vs-

ROBERT GAINES WILSON,

Defendant-Appellant.

Case No. 15277

REPLY BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT AND ORDER
OF THE
THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH

The Honorable G. Hal Taylor, Judge

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FILED

JUN 16 1978

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Plaintiff-Respondent,)	
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-vs-)	Case No. 15277
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TABLE OF CONTENTS

INTRODUCTION	1
ARGUMENT	
POINT I. THE TRIAL COURT ABUSED ITS DISCRETION IN MAKING ITS ALIMONY AWARD AND PROPERTY DISTRIBUTION	1
POINT II. IN HER ATTEMPTS TO CRITICIZE DEFENDANT'S DISCUSSION OF THE TRIAL COURT'S PROPERTY DISTRIBUTION, PLAINTIFF DISTORTS THE FACTS, IGNORES MANY RELEVANT FACTORS THIS COURT SHOULD CONSIDER IN DETERMINING WHETHER THE PROPERTY WAS DIVIDED EQUITABLY, AND TOTALLY MISEVALUATES THOSE FEW FACTORS SHE DOES CONSIDER	3
POINT III. PLAINTIFF'S PERMANENT AWARD OF \$900.00 PER MONTH ALIMONY WAS EXCESSIVE BOTH IN AMOUNT AND DURATION AND SHOULD BE REDUCED TO \$650.00 PER MONTH FOR A PERIOD OF THREE YEARS FROM THE DATE THE DIVORCE DECREE WAS ENTERED	11
CONCLUSION	15

AUTHORITIES

Cases

<u>Borough of Fanwood v. Rocco</u> , 59 N.J. Super. 306, 157 A.2d 712, 716	3
<u>Dubois v. Dubois</u> , 29 Utah 2d 75, 504 P.2d 1380 (1973)	3
<u>Frank v. Frank</u> , 18 Utah 2d 228, 419 P.2d 199 (1966)	3
<u>Hampton v. Hampton</u> , 80 Utah 570, 47 P.2d 419 (1935)	15

<u>Hirsch v. Hirsch</u> , 33 N.E.2d 371 (N.Y. 1975)	15
<u>McDonald v. McDonald</u> , 120 Utah 573, 236 P.2d 1066	9, 11
<u>Rayle v. Rayle</u> , 202 S.E.2d 286 (N.C. 1974)	15
<u>State v. Shafer</u> , 71 Ohio App. 1, 47 N.E.2d 669,670	3
<u>State v. Virgil</u> , 84 Ohio App. 15, 81 N.E.2d 295,298	3
<u>Tsoufakis v. Tsoufakis</u> , 14 Utah 2d 273, 382 P.2d 412 (1963) . .	2
<u>Tunstall v. Lerner Shops</u> , 160 S.C. 557, 159 S.E. 386, 388 . . .	3
<u>Williams v. State</u> , 159 Tex. Cr. R. 443, 265 S.W.2d 92, 95 . .	2
<u>Wilson v. Wilson</u> , 5 Utah 2d 79, 296 P.2d 997 (1956)	8

Statutes

Article VIII, Section 9, Constitution of Utah	2
---	---

Texts

24 Am. Jur.2d, Divorce, § 631	14
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IN THE SUPREME COURT OF THE STATE OF UTAH

ROCHELLE RITCHIE WILSON,)

Plaintiff-Respondent,)

-vs-)

ROBERT GAINES WILSON,)

Defendant-Appellant.)

Case No: 15277

INTRODUCTION

Defendant-Appellant Robert G. Wilson (hereinafter Defendant) respectfully submits the following brief in reply to the brief of Plaintiff-Respondent Rochelle R. Wilson (hereinafter Plaintiff) dated February 21, 1978. Defendant vigorously disputes many statements contained in the Statement of Facts in Plaintiff's brief (pp. 3-14). However, since the facts are so interrelated with the legal points at issue, Defendant does not now undertake to correct Plaintiff's Statement of Facts. Rather, the facts will be discussed as appropriate under the following argument headings.

ARGUMENT

POINT I. THE TRIAL COURT ABUSED ITS DISCRETION IN MAKING ITS ALIMONY AWARD AND PROPERTY DISTRIBUTION.

In her brief, Plaintiff devotes an inordinate number of pages attempting to convince this Court that the Trial Court's action should not be modified.

said action constituted "abuse of discretion". Defendant agrees with Plaintiff; abuse of discretion is the standard. However, Defendant disagrees sharply with Plaintiff's definition of exactly what constitutes an abuse of discretion. Plaintiff has taken the most extreme cases to be found anywhere - none of which are Utah decisions - upon which to base her definition of "abuse of discretion".

Abuse of discretion is not, as Plaintiff claims, an action "so palpably and grossly violative of fact and logic that it evidences not exercise of will but perversity of will; not exercise of judgment but defiance thereof; not exercise of reason but rather passion and bias". Nor, does abuse of discretion mean an action which is "arbitrary, fanciful or clearly unreasonable"; nor does it exist only when the record is "devoid of competent evidence in support of the Court's decision". (Plaintiff's Brief p. 19) Were abuse of discretion defined in the aforementioned terminology, there would be no purpose for the constitutionally mandated requirement that this Court review both the law and the facts in divorce actions. (Article VIII, Sec. 9, Constitution of Utah)

On the contrary, as stated in Tsoufakis v. Tsoufakis, 14 Utah 2d 273, 382 P.2d 412 (1963), abuse of discretion is defined simply as an unjust and inequitable action. This definition accords with the definitions given the term by a majority of courts across the country. The following quotations are representative:

"'Abuse of discretion' usually means doing differently from what the reviewing authority would have felt called upon to do, depending upon the facts of the particular case." Williams v. State, 159 Tex. Cr. R. 443, 265 S.W. 2d 92, 95.

"'Abuse of discretion' by trial court does not necessarily mean ulterior motive, arbitrary conduct or willful disregard of litigant's rights, but may mean failure to apply principle of law applicable to situation, if prejudice thereby results to litigant." State v. Virgi, 84 Ohio App. 15, 81 N.E.2d 295, 298; State v. Shafer, 71 Ohio App. 1, 47 N.E.2d 669, 670.

"Term 'abuse of discretion' is a strict legal term indicating that appellate court is simply of opinion that there was a commission of an error of law in the circumstances." Tunstall v. Lerner Shops, 160 S.C. 557, 159 S.E. 386, 388.

"The term 'abuse of discretion' means nothing else than that the court's ruling went far enough from the mark to become reversible error." Borough of Fanwood v. Rocco, 59 N.J. Super. 306, 157 A.2d 712, 716.

The remainder of this brief will focus on the evidence which clearly establishes that the Trial Court did in fact abuse its discretion in its property and alimony awards.

POINT II. IN HER ATTEMPTS TO CRITICIZE DEFENDANT'S DISCUSSION OF THE TRIAL COURT'S PROPERTY DISTRIBUTION, PLAINTIFF DISTORTS THE FACTS, IGNORES MANY RELEVANT FACTORS THIS COURT SHOULD CONSIDER IN DETERMINING WHETHER THE PROPERTY WAS DIVIDED EQUITABLY, AND TOTALLY MISEVALUATES THOSE FEW FACTORS SHE DOES CONSIDER.

In her brief, Plaintiff attempts to convince the Court that Defendant made numerous errors in his initial brief with respect to itemizing the property the respective parties received. It is true that Defendant counted the value of the stoneware twice (\$400.00) and did not include the gold and silver coin collection (\$10,000.00) in his itemization of property. However, in determining what property was awarded to the parties, Defendant took the list of property directly from the Divorce Decree prepared by Plaintiff's counsel. (R. pp. 129-131)

It is now certainly inconsistent of Plaintiff to attack Defendant, saying that he was inaccurate by making the aforementioned omissions when such inaccuracies were a direct result of Plaintiff's failure to properly prepare the Divorce Decree. With respect to the Toyota Land Cruiser, Defendant admits that he inadvertently did not include this in his itemization of property, thinking that the term "his automobile" in the Divorce Decree referred to the Mercedes automobile.

It is interesting to note how ready Plaintiff is to pounce upon these inaccuracies in Defendant's brief even though the same inaccuracies (upon which Defendant relied and based his decision) are contained in the Divorce Decree prepared by Plaintiff's own counsel. Moreover, there is one additional inaccuracy in Defendant's initial brief about which Plaintiff interestingly enough has nothing to say. In computing the value of the property awarded Plaintiff by the Trial Court, Defendant made an error in addition. (Defendant's Brief p. 9) Instead of receiving property valued at \$104,600.00, Plaintiff actually received property with a value of \$113,496.00. If one includes the net value (\$10,936.00) of the money and property Plaintiff received prior to the entry of the divorce as a portion of Plaintiff's property settlement, Plaintiff received property payments with a total value of \$124,432.00.

Defendant readily admits the foregoing inaccuracies in his brief. However, the Court should note that Plaintiff herself submitted a brief riddled with inaccuracies and omissions concerning the value and distribution of property.

Thus, Plaintiff's brief contains a slanted, highly distorted picture of the issues presently before this tribunal. These errors will be itemized and discussed below:

1. The most obvious inaccuracy in Plaintiff's brief is the total value which Plaintiff places on the property she received. She claims the value of this property to be \$90,744.00. (Plaintiff's Brief p. 10) This figure is simply incorrect. Even if one accepts all of the values as specified on Page 10 of Plaintiff's brief, the total value of the property comes to \$108,944.00 and not \$90,744.00.

2. In her itemization of property, Plaintiff made numerous valuation errors in addition to adding the total value of the property she received so that it appeared worth almost \$20,000.00 less than it actually was. The condominium was worth at least \$80,000.00 and not \$78,000.00 as listed in Plaintiff's brief. (Red TR. p. 37) Despite a jewelry appraisal by Diamond Brokerage which valued her diamond ring at \$6,000.00, Plaintiff still stubbornly stuck to a value of \$4,200.00 which she claimed the ring to have. (Plaintiff's Brief p. 10) Plaintiff valued the fish trap tables and bronze goblets, plates and flatware which Defendant received as being worth \$150.00 and \$300.00 respectively. (Plaintiff's Brief p. 12) These valuations fly in the face of Plaintiff's own estimates as contained in her own exhibits. (P. Ex. 13 and 14) (Plaintiff should at least be consistent. If she insists on using her values for some items, she should do so for all items). With respect to the suede chairs, etc.

book cases awarded Defendant, Plaintiff counted the value of these items twice. Said items were all a part of the corporate assets and yet Plaintiff figured their value both as corporate assets and as individually awarded items. In short, with respect to the suede chairs, etagere and book cases, Plaintiff did precisely what she condemned the Defendant for doing with the stoneware.

3. Plaintiff maintains that one of the important factors in determining how property should be distributed at the time of divorce is the money or property each party brought into the marriage. (Plaintiff's Brief pp. 3-5, 28, 34, 46). It is true that this is an important fact which the Court should consider. However, Plaintiff's discussion of this factor is highly inaccurate and evidences a rudimentary understanding of the laws of finance and economics. When the parties were married, Dr. Wilson brought assets of an income-producing nature into the marriage. At that time, contrary to Plaintiff's assertion, he had no concurrent liabilities. The money which he owed his father was not a debt which had come into fruition. Neither was the \$5,000.00 for the educational trust fund of his sons by a prior marriage. In short, these future debts in no way decreased the value of the assets Defendant contributed to the marriage. Defendant was still able to contribute \$15,000.00 to partially finance the purchase of the condominium in which he and Mrs. Wilson resided and Plaintiff was still able to make use of his office equipment and the business assets. He had no current offsetting liabilities.

Moreover, Plaintiff's argument that Defendant entered the marriage with an obligation to pay \$500.00 per month in child support for the maintenance of his two sons and that said obligation somehow operated to decrease the value of the assets Defendant brought into the marriage (Plaintiff's Brief p. 4) borders on the ridiculous. If this obligation is used to decrease the value of the assets then Defendant's medical degree, income, and potential earning capacity should be used to increase the value of the assets which he brought into the marriage.

4. Plaintiff asserts repeatedly that Defendant was at fault in breaking up the marriage and therefore he should be required to suffer monetarily because of this fault. In this regard, Plaintiff makes many assertions which are simply devoid of any substantiation by the record. For example, Plaintiff claims that Defendant fell in love with his best friend's wife and married her. There is not one scintilla of evidence to substantiate said claim. And yet, knowing full well that such is the case, Plaintiff nevertheless repeatedly harps on such assertion over and over again. (Plaintiff's Brief pp. 2, 13, 14, 33, 44, 47) If this Court is to consider statements which have no basis in the record, then the Court should hear the full story and not the slanted and distorted account which Plaintiff has concocted.

5. In addition to the above, Plaintiff also makes numerous other statements which cannot be substantiated from the record. For example, Plaintiff launches into an extended explanation of the obligations each party understood and assumed at the time of their marriage. (Plaintiff's Brief, pp. 5-6)

However, no citation of authority from the record substantiates any of the supposed understandings. Also, in attempting to justify why she never sought employment even though Defendant encouraged her to do so, Plaintiff states that additional income would certainly have only added to his [Defendant] tax burden. (Plaintiff's Brief, p. 7) It is interesting that Plaintiff readily excuses her failure to work and earn money for the support of the household on the basis that additional income would have added to Defendant's tax burden and yet at the same time flatly refuses to consider the tax ramifications bearing upon Defendant's pension plan.

6. Plaintiff repeatedly asserts that, unlike Defendant, she was awarded no assets of an income-producing nature and therefore she was shortchanged. (Plaintiff's Brief pp. 3, 4, 14, 21, 24) This argument borders on the ridiculous. Out of the bounty awarded Plaintiff, Plaintiff need only sell some of the items of property and immediately convert the cash proceeds into assets of an income-producing nature such as stocks, bonds, rental properties, etc. In short, if Plaintiff has the desire, she certainly can obtain assets of an income-producing nature. Thus, it is readily apparent that Plaintiff's attempt to distinguish the Utah cases of Dubois v. Dubois, 29 Utah 2d 75, 504 P.2d 1380 (1973), and Wilson v. Wilson, 5 Utah 2d 79, 296 P.2d 997 (1956), on the ground that the wives in these cases were awarded assets of an income-producing nature whereas she was not fails dismally.

7. One of the arguments which Plaintiff lists in an attempt to justify her large property award is her contribution to the accumulation of the marital estate. On Page 35 of her brief, Plaintiff states:

"The assets of this marital estate were accumulated almost exclusively during the course of this marriage. Its wealth was developed as a direct result of the joint efforts of both parties. . . ."

Plaintiff, however, omits to provide any specification regarding her contribution except to say that she performed the normal chores and duties of a housewife. In actuality, Plaintiff is merely trying to take advantage of a fortuitous set of circumstances. Plaintiff did not help support Defendant through the long and arduous process of medical school, internship and residency. At the time she married Defendant, his career was beginning. The frustrations and hardships were all behind him. There seems to be little question but that Defendant would have enjoyed exactly the same financial rewards with or without his marriage. This is not to say that Plaintiff should not be entitled to any property at the conclusion of her short-lived marriage to Defendant. It is merely to say that her share of the marital estate should be somewhat proportional to the sacrifice and effort she expended in accumulating said estate.

8. In her listing of factors justifying the property award, Plaintiff does not mention many of the other important ones, most notably, (1) the time and duration of the marriage, (2) and the children born and their respective ages. See McDonald v. McDonald, 120 Utah 573, 236 P.2d 1066; Frank v. Frank, Utah 2d 228, 419 P.2d 199 (1966). It must be again emphasized that the

duration of this short-lived marriage was six years, seven months and that no children were born to the union of Dr. and Mrs. Wilson.

As a result of the divorce and property distribution ordered by the Trial Court, Plaintiff received property with a value of \$113,496.00. If the net value (\$10,936.00) of the money and property Plaintiff received prior to the entry of the divorce is included in Plaintiff's share of the property distribution, Plaintiff received property and payments valued at \$124,432.00.

On the other hand, Dr. Wilson received property with a total value of \$193,350.65. This figure includes the value of the Toyota automobile, the value of the gold and silver coin collection, the value of his profit sharing trust at a full \$100,000.00 and the \$9,399.00 included in the 1976 tax refund. As discussed in Defendant's initial brief, pp. 17-18, the present value of the pension trust fund is not \$100,000.00 when tax considerations are taken into account. Rather, the current present value is no higher than \$50,000.00. Therefore, when \$50,000.00 is subtracted from Defendant's total property award as well as the \$9,399.00 which he received from his 1976 tax refund and which never should have been considered as part of the marital estate at all, (Defendant's Initial Brief, p. 9, # 36) Dr. Wilson's property award totals \$133,951.65.

In short, Defendant was awarded property worth just slightly more than the property awarded Plaintiff. Plaintiff's allegation that Defendant received more than two-thirds of the marital estate is erroneous. In light of all of the

factors discussed in McDonald, Supra, as well as the factors mentioned in [redacted] and Defendant's previous brief, there can be no question but that the Trial Court abused its discretion by awarding Plaintiff such an exorbitant property award. Said award should be reduced as suggested in Defendant's initial brief.

POINT III. PLAINTIFF'S PERMANENT AWARD OF \$900.00 PER MONTH ALIMONY WAS EXCESSIVE BOTH IN AMOUNT AND DURATION AND SHOULD BE REDUCED TO \$650.00 PER MONTH FOR A PERIOD OF THREE YEARS FROM THE DATE THE DIVORCE DECREE WAS ENTERED.

In her brief, Plaintiff makes many inconsistent and misleading statements regarding the alimony issue. For example, Plaintiff repeatedly suggests that the \$900.00 per month alimony award constitutes only eleven per cent of Defendant's income. (Plaintiff's Brief pp. 22, 23) However, in making this statement, Plaintiff does not mention that Defendant is obligated to pay \$500.00 per month in support payment for two children of a previous marriage. In short, it is misleading to infer as does Plaintiff that Defendant after making his alimony payments is still left with eighty-nine per cent of his gross income. Defendant has other obligations which are equally as pressing as the alimony payments. These obligations eat up much more than eleven per cent of Defendant's gross income.

At Page 40 of her brief, Plaintiff states that no case could be found which supports Defendant's contention that the needs of the spouse and the duration of the marriage are two factors of paramount importance with respect to the award of alimony. Then, just a few lines later on Page 40, Plaintiff [redacted]

"In reality, the two factors of paramount importance . . . are (1) the necessities of the wife, and (2) the financial ability of the husband."

In one breath Plaintiff states that the needs of the spouse are not of paramount importance and yet in the next breath Plaintiff states that in fact those needs are of paramount importance.

Defendant agrees with Plaintiff; her needs are of vital importance in determining the amount of alimony she should be awarded. In this regard, Plaintiff itemized and placed a value upon her needs and the total sum amounted to \$598.00 per month. (Red TR. 68; D. Ex. # 29) It is submitted that this itemization made by Plaintiff herself is much more realistic than the self-serving \$842.00 per month itemization of expenses she made at the time of trial. (P. Ex. 16)

In her initial \$598.00 itemization, Plaintiff listed the following expenditures: entertainment \$75.00, art supplies \$50.00, art classes \$20.00, pottery supplies \$20.00, pottery classes \$18.00. Certainly, many of these expenditures could be considered non-essential luxuries. With Defendant's suggested alimony award of \$650.00 per month, Plaintiff would have additional money to spend upon her recreational and avocational interests.

Plaintiff obviously would still be able to maintain the life-style to which she has become accustomed were this Court to trim her alimony award to \$650.00 per month. This is especially true since shortly after Plaintiff filed for divorce Defendant gave her over \$6,000.00 with which she purchased a new, completely paid for, automobile, and as a result of the divorce Decree, she was awarded

a thirteen room, fully paid for, condominium valued at \$80,000.00. (Red TR. P. Ex. 15, D. Ex. 21) Thus, Plaintiff - unlike the vast majority of Americans - has no rental, mortgage or car payments which must be deducted from her monthly income. She can spend all of the alimony payments she receives directly for her own personal needs and desires.

The permanency of the Trial Court's \$900.00 per month award of alimony not only makes it especially egregious but is also detrimental to both Plaintiff and Defendant. Such a high alimony award will definitely encourage Plaintiff not to do anything - remarrying, obtaining gainful employment, etc. - which would have the effect of reducing or eliminating her monthly alimony check. It is clear that such a high alimony award simply encourages Plaintiff to sit back, do nothing, and wait for her monthly check to arrive.

In her brief, Plaintiff argues that the permanency aspect of her alimony award can be modified if it ever becomes inequitable by the doctrine of "changed circumstances". Plaintiff misses the point; the award is highly inequitable now and was so the day it was granted. Furthermore, it must be pointed out that the doctrine of "changed circumstances" works both ways. Plaintiff would be much more highly motivated to find employment and/or remarry if she knew that her monthly alimony checks would eventually be cut off. If at the time the alimony award is scheduled to terminate Plaintiff has been absolutely unable to secure suitable employment, then the doctrine of "changed circumstances" could operate to continue the alimony award to Plaintiff until she has had

sufficient time to obtain proper employment.

Plaintiff is an intelligent and healthy woman, capable of obtaining a meaningful and lucrative job. In her brief, she makes it sound as if it would be impossible for her to be retained as an x-ray technician or obtain any other kind of meaningful employment. In light of the large number of women presently in the work force and the enlightened attitude of society in that regard, it is preposterous to assume that Plaintiff would be unable to obtain an excellent job. At the time the divorce was granted, Plaintiff was 40 years old. Most of her working life still lay ahead of her. She had no small children at home who required her care and supervision. In short, Plaintiff has no reason why she should or could not be her own provider.

As indicated previously, Plaintiff contends that the financial ability of the husband is of paramount importance in determining the amount and duration of an alimony award. Once again, this argument is misleading. Plaintiff's own authorities as quoted in her brief establish that a husband's earning capacity has no significance separate and apart from the wife's needs. In other words, the financial ability of the husband is not a separate and independent criterion, but rather is only relevant as it bears on the wife's needs. If the wife is not in need, then the financial ability of the husband is immaterial. Exactly the same language quoted by Plaintiff in her brief, Pages 40-41, proves the point. In 24 Am. Jur.2d, Divorce, § 631, it is stated:

"Broadly speaking, the principal factors are circumstances which govern the amount to be allowed as permanent alimony are the necessities of the wife and the financial ability of the husband to meet them." [Emphasis added]

And, as stated in the Utah decision of Hampton v. Hampton, 80 Utah 570, 47 P.2d 419 (1935) and quoted in Plaintiff's brief:

"The amount of alimony is measured by the wife's needs and requirements, considering her station in life, and upon the husband's ability to pay."

It is clear that the husband's ability to pay acts only as a modifier upon the wife's needs and requirements.

CONCLUSION

By virtue of her divorce action, Plaintiff has been allowed to reap a windfall based upon her brief marital sojourn with Defendant. Many recent cases strongly recognize that a wife does have the ability and duty to support herself, that her role in society is changing, and that the Courts must take cognizance thereof. Rayle v. Rayle, 202 S.E.2d 286 (N.C. 1974); Hirsch v. Hirsch, 33 N.E.2d 371 (N.Y. 1975).

Although Defendant wants to adequately provide for the needs of the Plaintiff for a transition period long enough so as to allow Plaintiff to obtain meaningful employment, Defendant should not be required to sacrifice an exorbitant amount of property to Plaintiff. Neither should Defendant be shackled with a \$900.00 per month permanent alimony award. Such an unduly large award cannot help but have the effect of destroying any initiative which

plaintiff might otherwise have had to remarry or seek gainful employment.

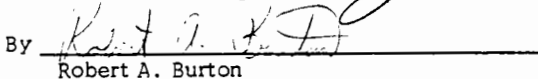
Therefore, in light of the above discussion and Defendant's previous brief, it is proposed that Plaintiff be required to sell the condominium and divide the proceeds with Defendant; and further that her alimony be reduced to \$650.00 for a three-year period from the date of the divorce Decree. Defendant therefore respectfully requests that this Court modify the Trial Court's Decree and grant Defendant relief as prayed.

Dated this 14 day of June, 1978.

Respectfully submitted,

STRONG & HANNI

By 
L. L. Summerhays

By 
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Attorneys for Defendant-Appellant

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE

A. Nature of the Case	1
B. Course of Proceedings	1
C. Relief Sought on Appeal	2
D. Statement of Facts	3

ARGUMENT

Point I

ALTHOUGH THE SUPREME COURT MAY REVIEW THE EVIDENCE AND SUBSTITUTE ITS JUDGMENT TO CORRECT ANY MANIFEST INEQUITIES RESULT-
INT FROM THE DECISION BELOW, THE TRIAL JUDGE IN A DOMESTIC MATTER HAS CONSIDERABLE LATITUDE OF DISCRETION IN ADJUSTING THE FINANCIAL AND PROPERTY INTERESTS OF THE PARTIES BEFORE THE COURT. HIS ACTIONS ARE PRESUMED TO BE CORRECT AND VALID AND MAY NOT BE UPSET OR MODIFIED ON APPEAL UNLESS THE RECORD CLEARLY DISCLOSES THAT THE TRIAL COURT'S DECREE WAS SO PLAINLY ARBITRARY AS TO SHOW A CLEAR ABUSE OF DISCRETION WHICH WORKS A MANIFEST INJUSTICE OR INEQUITY . . . 15

Point II

THE TRIAL COURT'S ADJUSTMENT OF THE FINANCIAL AND PROPERTY INTERESTS OF THE PARTIES WAS FAIR AND EQUITABLE.

A. APPELLANT'S STATEMENT OF FACTS WITH RESPECT TO THE EXTENT, VALUE AND DISTRIBUTION OF THE MARITAL ESTATE IS PARTIALLY IN ERROR AND, CONSEQUENTLY, CREATES THE ILLUSION THAT APPELLANT WAS AWARDED LESS AND RESPONDENT MORE THAN WHAT THE TRIAL COURT ACTUALLY AWARDED IN ITS DECREE 26

B. PLAINTIFF'S AWARD OF \$2,000.00
CASH WAS BASED ON EVIDENCE NOT AVAIL-
ABLE AT THE TIME OF TRIAL WHICH WAS
PROMPTLY AND PROPERLY SUBMITTED TO THE
COURT UPON ITS DISCOVERY AND PRIOR TO
THE COURT'S MAKING ITS FINAL ORDER . . 36

C. APPELLANT'S PENSION-TRUST FUND
WAS PROPERLY VALUED, AND IN ANY EVENT
HIS ASSIGNMENT OF ERROR IN THIS REGARD
IS IMPROPERLY RAISED ON APPEAL 37

Point III

RESPONDENT'S AWARD OF ALIMONY IS
NOT ABSOLUTELY PERMANENT AND, IN
COMPARISON TO DEFENDANT'S INCOME
AND EARNING POTENTIAL, IT IS
EXTREMELY MODEST 38

RESPONDENT'S REQUEST FOR RELIEF ON APPEAL 45

CONCLUSION 45

Cases Cited

Allen v. Allen, 109 Ut. 99, 165 P.2d 872 (1946) . 18

Carter v. Carter, 563 P.2d 1977 (1977) . . . 18, 31

Dehm v. Dehm, 545 P.2d 525 (Ut. 1976) 22

Dubois v. Dubois, 29 Ut.2d 75, 504 P. 2d
1380 (1973) 20, 32

Ehninger v. Ehninger, 569 P.2d 1104 (Ut. 1977) . 45

Hamilton v. U.S., 31 A.2d 887 20

Hampton v. Hampton, 80 Ut. 570, 47 P.2d
419 (1935) 23, 41

Hansen v. Hansen, 537 P.2d 491 (Ut. 1975) 17

Harding v. Harding, 26 Ut.2d 277, 488 P.2d
308 (1971) 18

<u>Kiger v. Kiger</u> , 29 Ut. 2d 167, 506 P.2d 441 (1973)	45
<u>Lawlor v. Lawlor</u> , 121 Ut. 201, 240 P.2d 271 (1952)	16
<u>MacDonald v. MacDonald</u> , 120 Ut. 573, 236 P.2d 1066 (1951)	32, 33, 34
<u>Martinett v. Martinett</u> , 8 Ut.2d 202, 331 P.2d 821 (1958)	21
<u>Marzique v. Marzique</u> , 356 P.2d 801 (D.C. Cir., 1966)	31
<u>Mitchell v. Mitchell</u> , 527 P.2d 1359 (Ut. 1974). .	18
<u>Naylor v. Naylor</u> , 563 P.2d 184 (Ut. 1977)	17
<u>Platt v. Platt</u> , 17 Ariz.App. 458, 498 P.2d 532 (1972)	19
<u>Pinion v. Pinion</u> , 92 Ut. 255, 67 P.2d 265 (1956). .	32
<u>Reiger v. Christensen</u> , 529 P.2d 1362 (C.A. Colo., 1974)	31
<u>Searle v. Searle</u> , 522 P.2d 697 (1974)	32
<u>Stone v. Stone</u> , 19 Ut.2d 378, 431 P.2d 802 (1967)	17, 31
<u>Stucki v. Stucki</u> , 562 P.2d 240 (Ut. 1977)	31
<u>U.S. v. McWilliams</u> , 163 F.2d 695	19
<u>Wendel v. Swanberg</u> , 384 Mich. 468, 185 N.W.2d 348	19
<u>Whitehead v. Whitehead</u> , 16 Ut.2d 179, 397 P.2d 987	18
<u>Wilson v. Wilson</u> , 5 Ut.2d 79, 296 P.2d 977 (1956)	23, 24, 32, 33
<u>Woolley v. Woolley</u> , 113 Ut. 391, 195 P.2d 743 (1948)	18, 30, 45

Texts Cited

24 Am.Jur.2d <u>Divorce</u> §631	40, 42
24 Am.Jur.2d <u>Divorce</u> §632	42
24 Am.Jur.2d <u>Divorce</u> §635	41